

JOINT CONFERENCE COMMITTEE REPORT**on Senate Bill No. 1405**

We, the conferees, appointed by the respective bodies to consider and report upon the disagreeing vote on **Senate Bill No. 1405**, report as follows:

A. We recommend that the House Amendment in the Nature of a Substitute (23106489D) be rejected.

B. We recommend that the attached Amendment in the Nature of a Substitute (23107521D) be accepted to resolve the matter under disagreement.

Respectfully submitted,

Senator George L. Barker (signed)

Senator Janet D. Howell (signed)

Senator Stephen D. Newman (signed)

Conferees on the part of the Senate

Delegate Joseph P. McNamara (signed)

Delegate Robert S. Bloxom, Jr. (signed)

Delegate Mark D. Sickles (signed)

Conferees on the part of the House

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SENATE BILL NO. 1405**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Joint Conference Committee

on February 24, 2023)

(Patron Prior to Substitute--Senator Barker)

A BILL to amend and reenact § 58.1-301 of the Code of Virginia, relating to income tax; rolling conformity; report.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-301 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-301. Conformity to Internal Revenue Code.

A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, ~~as they existed on December 31, 2021,~~ except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code;
2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code;
3. The original issue discount on applicable high yield discount obligations under § 163(e)(5)(F) of the Internal Revenue Code;

22 4. The deferral of certain income under § 108(i) of the Internal Revenue
23 Code. For Virginia income tax purposes, income from the discharge of
24 indebtedness in connection with the reacquisition of an "applicable debt
25 instrument" (as defined under § 108(i) of the Internal Revenue Code) reacquired in
26 the taxable year shall be fully included in the taxpayer's Virginia taxable income
27 for the taxable year, unless the taxpayer elects to include such income in the
28 taxpayer's Virginia taxable income ratably over a three-taxable-year period
29 beginning with taxable year 2009 for transactions completed in taxable year 2009,
30 or over a three-taxable-year period beginning with taxable year 2010 for
31 transactions completed in taxable year 2010 on or before April 21, 2010. For
32 purposes of such election, all other provisions of § 108(i) of the Internal Revenue
33 Code shall apply mutatis mutandis. No other deferral shall be allowed for income
34 from the discharge of indebtedness in connection with the reacquisition of an
35 "applicable debt instrument";

36 5. For taxable years beginning on and after January 1, 2019, the suspension
37 of the overall limitation on itemized deductions under § 68(f) of the Internal
38 Revenue Code;

39 6. For taxable years beginning on and after January 1, 2017, but before
40 January 1, 2018, and for taxable years beginning on and after January 1, 2019, the
41 7.5 percent of federal adjusted gross income threshold set forth in § 213(a) of the
42 Internal Revenue Code that is used for purposes of computing the deduction
43 allowed for expenses for medical care pursuant to § 213 of the Internal Revenue
44 Code. For such taxable years, the threshold utilized for Virginia income tax
45 purposes to compute the deduction allowed for expenses for medical care pursuant
46 to § 213 of the Internal Revenue Code shall be 10 percent of federal adjusted gross
47 income;

48 7. The provisions of §§ 2303(a) and 2303(b) of the federal Coronavirus
49 Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to the net
50 operating loss limitation and carryback;

51 8. The provisions of § 2304(a) of the federal Coronavirus Aid, Relief, and
52 Economic Security Act, P.L. 116-136 (2020), related to a loss limitation applicable
53 to taxpayers other than corporations;

54 9. The provisions of § 2306 of the federal Coronavirus Aid, Relief, and
55 Economic Security Act, P.L. 116-136 (2020), related to the limitation on business
56 interest; ~~and~~

57 10. For taxable years beginning before January 1, 2021, the provisions of
58 §§ 276(a), 276(b)(2), 276(b)(3), 278(a)(2), 278(a)(3), 278(b)(2), 278(b)(3),
59 278(c)(2), 278(c)(3), 278(d)(2), and 278(d)(3) of the federal Consolidated
60 Appropriations Act, P.L. 116-260 (2020), and §§ 9673(2), 9673(3), 9672(2), and
61 9672(3) of the federal American Rescue Plan Act, P.L. 117-2 (2021) related to
62 deductions, tax attributes, and basis increases for certain loan forgiveness and other
63 business financial assistance; and

64 11. a. (1) Any amendment enacted on or after January 1, 2023, with a
65 projected impact that would increase or decrease general fund revenues by greater
66 than \$15 million in the fiscal year in which the amendment was enacted or any of
67 the succeeding four fiscal years. The provisions of this subdivision shall not apply
68 to any amendment to federal income tax law that is either subsequently adopted by
69 the General Assembly or a federal tax extender as defined in subdivision b.

70 (2) All amendments enacted on or after January 1, 2023, and occurring
71 between adjournment sine die of the previous regular session of the General
72 Assembly and the first day of the subsequent regular session of the General
73 Assembly if the cumulative projected impact of such amendments would increase

74 or decrease general fund revenues by greater than \$75 million in the fiscal year in
75 which the amendments were enacted or any of the succeeding four fiscal years.
76 The provisions of this subdivision shall not apply to any amendment to federal
77 income tax law that is (i) subsequently adopted by the General Assembly, (ii) a
78 federal tax extender as defined in subdivision b, or (iii) enacted before the date on
79 which the cumulative projected impact is met. However, any amendment
80 conformed to pursuant to clause (iii) shall be included in the calculation of the \$75
81 million threshold for purposes of determining whether such threshold has been
82 met.

83 (3) Beginning January 1, 2024, the threshold provided by subdivision (1)
84 shall be adjusted annually based on the preceding change in the Chained Consumer
85 Price Index for All Urban Consumers (C-CPI-U), as published by the Bureau of
86 Labor Statistics for the U.S. Department of Labor or any successor index for the
87 previous year.

88 b. For purposes of this subdivision 11, "amendment" means a single
89 amendment to federal income tax law or a group of such amendments enacted in
90 the same act of Congress that collectively surpass the threshold impact, and
91 "federal tax extender" means an amendment to federal tax law that extends the
92 expiration date of a federal tax provision to which Virginia conforms or has
93 previously conformed.

94 c. The Secretary of Finance, in consultation with the Chairmen of the
95 Senate Committee on Finance and Appropriations and the House Committees on
96 Appropriations and Finance, shall be responsible for determining whether the
97 criteria of subdivision a are met.

98 d. The Secretary of Finance shall annually provide a report on or before
99 November 15 of each year on the fiscal impact of amendments to federal income

100 tax law occurring since the adjournment sine die of the preceding regular session
101 of the General Assembly to the Chairmen of the Senate Committee on Finance and
102 Appropriations and the House Committees on Appropriations and Finance. The
103 Secretary of Finance shall also provide updates to the same Chairmen on any
104 further amendments to federal income tax law occurring between submission of the
105 required report and the first day of the subsequent regular session of the General
106 Assembly.

107 C. The Department of Taxation is hereby authorized to develop procedures
108 or guidelines for implementation of the provisions of this section, which
109 procedures or guidelines shall be exempt from the provisions of the Administrative
110 Process Act (§ 2.2-4000 et seq.).

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